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LEON COUNTY
ATTORNEY'S OFFICE

LEON COUNTY
ATTORNEY'S OFFICE

This Settlement Agreement made, executed and entered into on this 8th day

of May, 2002, by and between LEON COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as the "County") and BRADFORDVILLE PHIPPS LIMITED PARTNERSHIP, a limited partnership organized and existing under the laws of the State of Florida, its grantees, lessees, successors and assigns (hereinafter collectively referred to as "Bradfordville Phipps").

WITNESSETH:

WHEREAS, Bradfordville Phipps is the owner of certain lands ("the Property") located in the vicinity of the intersection of Bradfordville Road and Thomasville Road in Leon County, Florida, which lands are more particularly described in Exhibit A, attached hereto and made a part hereof; and

WHEREAS, as a result of previous actions taking place in the "Bradfordville Study Area", certain litigation has ensued between Bradfordville Phipps and Leon County; and

WHEREAS, one of the several matters in litigation includes an appeal by the County to the First District Court of Appeal of a trial court order finding and holding

that Bradfordville Phipps' property was not subject to Leon County Ordinance Nos.

00-30 and 00-31; and,

WHEREAS, another of the several matters in litigation includes a request by Bradfordville-Phipps for discretionary review by the Florida Supreme Court of a decision in favor of the County by the trial court, which was upheld by the 1st DCA, stating that the County was not liable for any temporary taking damages; and

WHEREAS, the County is desirous of applying certain provisions of such ordinances to the subject property, as well as addressing issues of open space, park land, stormwater treatment, and aesthetic features of the subject property; and

WHEREAS, the parties hereto are desirous of settling and disposing of all pending litigation between the parties.

NOW THEREFORE, in consideration of the hereinabove set forth premises, in consideration of the covenants and agreements set forth herein and in further consideration of the sum of ten dollars (\$10) and other good and valuable considerations paid by each party to the remaining party, the receipt and sufficiency of which considerations are hereby conclusively acknowledged by both parties, the parties hereto do agree as follows:

1. Each and every provision of this Settlement Agreement is deemed to be an integral part hereof and shall not be deemed to be separate agreements.
2. Bradfordville Phipps is the owner of those lands described in Exhibit A hereof,

which lands are hereinafter referred to as the "Property".

3. Bradfordville Phipps shall dismiss with prejudice its request for discretionary review pending in the Florida Supreme Court in Case No. SC02-283 thereby allowing the First District Court of Appeal's decision in Case No. 01-541 to become final and non-appealable.
4. The County shall dismiss its appeal, currently pending in the First District Court of Appeal of Florida, being Case No. 01-3275, thereby allowing the trial court's order in Case No. 00-2454, Second Judicial Circuit in and for Leon County, Florida, to become final and non-appealable.
5. Bradfordville Phipps shall file a Notice of Dismissal with Prejudice in Case No. 99-6396 (Bradfordville Phipps v. Bert Hartsfield as Property Appraiser of Leon County) and a Notice of Dismissal with Prejudice in Case No. 00-2310 (Bradfordville Phipps v. Leon County), both pending in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.
6. Bradfordville Phipps shall dismiss with prejudice its Petition for Supplemental Relief filed in Case No. 97-1423, pending in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.
7. Bradfordville Phipps shall file a Notice of Dismissal with Prejudice in Case No. 99-3411, now pending in the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida.

8. The County shall continue to defend the Summary Judgment entered against third parties by the Circuit Court for the Second Judicial Circuit in and for Leon County, Florida, in Case No. 98-4792, now pending before the First District Court of Appeal in Case No. 01-3138.
9. The County acknowledges and agrees that Bradfordville Phipps may utilize the stormwater pond (Leon County Stormwater Management Facility No. 6), which was constructed as a result of the acquisition of lands owned by Bradfordville Phipps through condemnation proceedings in Case No. 97-1423, in Circuit Court for the Second Judicial Circuit in and for Leon County, Florida, as an integral part of its stormwater requirements in meeting the stormwater standards set forth herein.
10. In the event the variance described in paragraph 17 hereof is granted Bradfordville Phipps shall be entitled to develop and construct 55% of impervious area on those lands depicted as Phase B (hereinafter referred to as "Phase B") on Exhibit A-1 attached hereto, provided that they do not exceed 29.92 acres in total area. Except as otherwise specifically provided herein, Bradfordville Phipps shall be entitled to proceed to develop and use Phase B for any combination of any uses set forth in the applicable zoning classification "Bradfordville Commercial 1 (BC-1)". The County has previously determined that the four-inch water quality treatment standard provided in Ordinance No.

00-31 can be met on Phase B, provided the 55% imperviousness on 29.92 acres

of "Bradfordville Phipps" land is not exceeded. The four-inch retention and treatment will be provided through the combination of (1) the use of Stormwater Management Facility No. 6, (2) the on-site retention of runoff from the entire developed site equivalent to a volume of one-inch over the impervious area on the developed site, and (3) the spray irrigation of those lands described in Exhibit B hereto at a rate not to exceed 1.5 inches per week. As their part in meeting the four-inch water quality treatment standard, Bradfordville Phipps agrees to provide treatment as follows: retain on Phase B runoff from the entire developed site, a volume equivalent to one inch multiplied by the impervious area on the developed site. An engineer must certify that the above described one inch retained volume will meet the drawdown requirements in Section 10-221(b) of Chapter 10 of the Code of Laws of Leon County, Florida. In the event that Phase B (29.92 acres) is developed to a lesser density than 55% impervious, the on-site treatment shall still be determined as set forth in the paragraph immediately above, the treatment volume being directly proportional to the amount of impervious area on the developed site. Subsequent to water quality pretreatment as set forth above, Bradfordville Phipps shall be entitled to convey all runoff in excess of the required on-site pretreatment volume directly to Stormwater Management

Facility No. 6. Notwithstanding the provisions of this paragraph the above provisions shall not govern, control or effect the storm water requirements, standards, or management, relating to that part of Bradfordville Phipps' lands designated as "Phase A" (5.97 acres) on Exhibit A-1 hereto, but, instead, the storm water permits previously issued by the County relating to said lands shall govern and control storm water management on such parcel.

11. Within six months from the Effective Date hereof, Bradfordville Phipps shall submit to the County an application for construction of a spray irrigation system to be installed on the Public Property. The rate of land application shall not exceed 1.5 inches per week. Under no circumstances shall irrigation water be allowed to discharge from the existing Bradfordville Phipps properties. Within six months after the County has approved such application Bradfordville Phipps shall complete the installation of such irrigation system. The County shall operate such system at such times as it deems necessary or desirable. For the first two years after substantial completion of construction of such system Bradfordville Phipps shall be responsible for the maintenance and repair thereof at Bradfordville Phipps' sole cost and expense. Upon the expiration of such two years, the County shall be solely responsible for all costs of any and all subsequent maintenance and repair. Furthermore, Bradfordville Phipps shall submit to the County for review and approval, all

plans for said irrigation system, including where equipment is to be located, power sources, and to provide adequate access for maintenance of the spray irrigation system.

12. Bradfordville Phipps shall gift and convey to Leon County by special warranty deed that real property described in Exhibit B attached hereto and by reference made a part hereof (hereinafter referred to as the "Public Property"). Such conveyance shall be subject to all restrictive covenants of record and subject to the rights of any third parties. Said conveyance shall contain and be subject to restrictions upon the use of said lands which shall provide that the County shall use the same only for spray irrigation purposes, parks and passive recreational purposes. Bradfordville Phipps, in the permitting and development of the Property shall be entitled to the use of said Public Property in the computation of its allowable impervious area and of its required green space, open space, and any and all similar requirements.
13. The effective date of Leon County Certificate of Concurrency No. LCM980012 shall be the Effective Date of this Agreement.
14. Bradfordville Phipps agrees to grant to the County an easement limited solely to pedestrian and bicycle use, which easements location is depicted on Exhibit C hereof. The County shall have the right to improve such easement area for pedestrian and bicycle use but shall take reasonable action to enforce the

limitation of its use to the above purposes.

15. Subject to submittal to and approval by the County of the construction plans, and inspection by County inspectors during construction, Bradfordville Phipps shall be entitled to relocate Ayavalla Drive at its sole cost and expense. In the event it elects to relocate such street the following provisions shall apply:
- (A) The relocated street shall be in the location shown on Exhibit D hereto.
 - (B) The relocated street shall be constructed to the same specifications under which the existing street was constructed.
 - (C) The relocated street shall be constructed in a manner which will require a minimum of interruption of traffic and which will provide reasonable alternate access to the Publix Shopping Center during construction;
 - (D) Upon substantial completion of the opening of the relocated street, the County and Bradfordville Phipps shall exchange deeds so that (i) the County will own the right of way for the relocated street and (ii) Bradfordville Phipps will own that part of the right of way of the existing street that does not remain a part of the relocated street. The County will take such action as is required by statute or ordinance to allow it to make the conveyance called for herein.
 - (E) The pavement width and right of way for the relocated street shall be of the same width as the existing street and the intersection with

Bradfordville Road shall be of the same design as the existing street intersection.

- (F) The conveyance from Bradfordville Phipps to the County shall include the additional right of way needed for relocated turn lanes. The conveyance from the County to Bradfordville Phipps shall include any portion of the existing turn lanes which are not needed for the relocated intersection.

16. Notwithstanding the dismissal of the appeal of Circuit Court Case No. 99-1833, *supra*, the development of the Property shall be subject to the following:

- (A) The stormwater requirements set forth herein;
- (B) Those design standards set forth in Exhibit E hereof;
- (C) No use of the Property may be made by the uses set forth in Exhibit F hereof.

17. The County acknowledges that Bradfordville Phipps is desirous of constructing on the northern portion of the site a single structure, with square footage which may exceed certain existing parameters under applicable ordinances, rules and regulations. The County acknowledges that Bradfordville Phipps has the right to apply for a variance to said square footage limitations, as well as a variance to any applicable impervious surface limitations that may appear in the *Leon County Code of Laws*. The County agrees that any such application

will be expeditiously processed and given a full, fair and impartial hearing. This Agreement does not approve, nor in any way guarantee, any such variances. Should such variance request not be granted and become final and non-appealable, then the terms of this Agreement shall become null, void and of no force or effect and neither party hereto shall have any rights or liabilities hereunder.

18. Notwithstanding any other provision of this Agreement to the contrary the following provisions shall govern and control:
- (A) Neither party shall dismiss any pending litigation (trial or appellate) until and unless the variances described in paragraph 17 above are approved and has become final and non-appealable.
 - (B) The "Effective Date" of this Agreement shall be the date of the day after such variance has become final and non-appealable.
 - (C) The conveyance of the Public Property by Bradfordville Phipps to the County and the granting of the easements described in paragraph 12 and 14 hereof shall not be made prior to the Effective Date. Such instruments of conveyance and grant of easement shall be delivered within thirty days after the Effective Date hereof.
19. All parties shall bear their own costs and attorneys fees, and no damages shall be sought against either party as a result of all litigation now pending between

each party. Further, Bradfordville Phipps and its partners shall execute a General Release of any and all claims arising out of facts, events or occurrences transpiring prior to the date hereof, that they had, have, or could have been brought against the County, its officers, officials and employees.

20. The County agrees that it, in conjunction with Bradfordville Phipps, shall defend any contest of any approvals or variances which might be granted to Bradfordville Phipps for the subject property as a result of this Settlement Agreement.
21. The terms, provisions, benefits and restrictions set forth herein shall be deemed to run with those lands described in Exhibit A-1 hereto and shall inure to the benefit of the successors and assigns of the parties hereto, including, but not limited to all persons and entities claiming by, through or under Bradfordville Phipps.
22. The County agrees to diligently pursue the prompt and final resolution of Case No. 98-6337 currently pending in the Circuit Court, Second Judicial Circuit in and for Leon County, Florida.

IN WITNESS WHEREOF the parties hereto have caused these presents to be executed in their names the day and year first above written.

BRADFORDVILLE PHIPPS LIMITED PARTNERSHIP

By: Bradfordville Land Company, Inc.
Its General Partner

By: Ronald P. Bradford, Its President

LEON COUNTY, FLORIDA

BY: Dan Winchester
Dan Winchester, Chairman
Board of County Commissioners

Attest:
Bob Inzer, Clerk of the Court
Leon County, Florida

BY: [Signature]



Approved as to Form:
Leon County Attorney's Office:

BY: [Signature]
Herbert W.A. Thiele, Esq.
County Attorney